

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

YVONNE C. JONES,)	
)	
)	
Plaintiff,)	
)	
v.)	Case No. 3:15-1272
)	Judge Sharp
OCWEN FINANCIAL CORPORATION)	
and OCWEN LOAN SERVICING, LLC)	
)	
Defendants.)	

ORDER

The Magistrate Judge has entered a Report and Recommendation (“R&R”) (Docket No. 17) recommending that Defendants’ unopposed Motion to Dismiss be granted and that this case be dismissed. Apparently unbeknownst to the Magistrate Judge, however, the Defendants’ Motion may have been unopposed because Plaintiff, who is proceeding *pro se*, may have not been served with it. That is what she claims in a Motion to Continue (Docket No. 20) that was filed after the entry of the R&R, and, in a separately filed Objection, she “humbly approach[es] the court to allow a continuance[.]” (Docket No. 21 at 1). Defendants have filed a response voicing no opposition to the request for continuance, but stating that they “intend to file a response to Plaintiff’s objection to the Report and Recommendation.” (Docket No. 22 at 1).

Local Rule 5.03, Administrative Order 167, and the User Manual for CM/ECF govern electronic filings in this Court. While most attorneys can be served electronically, “the Parties filing documents using CM/ECF are responsible for serving *paper copies* of all documents that are filed electronically, and a copy of the NEF [Notice of Electronic Filing], to attorneys and *pro se* litigants who are not registered on CM/ECF. Those parties to whom such paper copies are required to be mailed

are listed in the NEF section labeled: ‘Notice will be delivered by other means to:’”. User Manual at 36 (2012) (emphasis added).


The NEF for Plaintiff indicates that notice should be delivered by other means to “Yvonne C. Jones, 3013 Chateau Valley Drive, Nashville, TN, 37207.” Nevertheless, the Certificate of Service for both the Motion to Dismiss and the Memorandum in support only state that “the foregoing was electronically filed with the Clerk of the Court using CM/ECF on this 7th day of January, 2016.” (Docket No. 11 at 1, 12 at 6). This is wholly non-compliant with this Court’s requirements for electronic filing.

As it stands, the Court has no way of knowing if Plaintiff was served with Defendant’s Motion to Dismiss, and it is likely that she was not. In fact, in response to Plaintiff’s request for a continuance, Defendants do not even suggest that Plaintiff was properly served.

Because the Magistrate Judge did not have the benefit of any argument Plaintiff may have wanted to make in response to the Defendant’s Motion, the R&R will be vacated. Further, the Motion to Dismiss will be denied, albeit without prejudice to refiling with proper service, at which point Plaintiff can file a response.

Accordingly, the R&R (Docket No. 17) is hereby VACATED, and Defendant’s Motion to Dismiss is hereby DENIED WITHOUT PREJUDICE to refiling. In light of these rulings, Plaintiff’s Motion for Continuance (Docket No. 20) and Objection (Docket No. 21) to the Report and Recommendation are DENIED AS MOOT.

It is SO ORDERED.



KEVIN H. SHARP
UNITED STATES DISTRICT JUDGE